

Attorney Doc:
CY-001

Application Serial Number:
09/621,717

Filing Date:
07/24/2000

Examiner:
Thomas, T.

Gro 2822

**Invention: STRUCTURE AND METHOD FOR MONITORING A SEMICONDUCTOR P
AND METHOD OF MAKING SUCH A STRUCTURE**

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Transmitted herewith is an amendment in the above-identified application. The fee has been calc
shown below.

CLAIMS AS AMENDED

	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	NO. OF EXTRA CLAIMS PRESENT	RATE	
TOTAL CLAIMS	26	MINUS	26	0	\$18	
INDEP. CLAIMS	3	MINUS	3	0	\$84	

— Petition is hereby made under 37 CFR 1.136(a) to extend the time for response to the Office to and through, comprising an extension of the shortened statutory period of:

one month (\$110)

 three months (\$920)

two months (\$400)

four months (\$1,440)

TOTAL ADDITIONAL FEE FOR THIS AMENDMENT

 A check in the amount of \$ 0.00 is attached.

X Please charge any necessary additional fees or credit any overpayment to Deposit A 2087.

X No additional fee is required.

Conditional Petition for Additional Extension of Time

It is believed that the indicated items are timely filed. However, in the event an additional extension is required, please consider this a petition for extension of time under 37 C.F.R. § 1.136(a). Please charge any fees that may be applicable to this petition.

Please charge any fees that may be required to Deposit Account No. 50-2087.

JUNE 7, 2002

date

Bradley Sako
Reg. No. 37,923

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37 C.F.R. 81.8

☒ Transmitted via facsimile to the United States Patent and Trademark Office to fax number: 1-703.305.34.
Date of Transmittal: JUNE 7, 2002

[] deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Pat
Washington, D.C. 20231.
Date of Deposit: _____

Typed/Printed Name: BRADLEY T. SAKO

Signature: [Signature]

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Serial No.: 09/621,717

Group Art Unit: 2822

Filed: July 24, 2000

Examiner: Thomas, Tontae M.

Title: STRUCTURE AND METHOD FOR
MONITORING A SEMICONDUCTOR
PROCESS, AND METHOD OF
MAKING SUCH A STRUCTURE

Attorney Docket No.: CY-0013

S/Elector
6/12/02
A. Wall

RESPONSE TO OFFICE ACTION

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

The following is submitted in response to the Office Action dated May 7, 2002, a currently due June 7, 2002.

REMARKS

Provisional Election with Traverse

In response to the restriction requirement set forth in the Office Action dated May 7, 2002, the claims of Group 2 (claims 10-26) are provisionally elected with traverse.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Traversal of Restriction

Restriction is proper only when (1) the restricted inventions are independent or patentably distinct, and (2) when there is a serious burden on the Examiner (MPEP 803). The burden on the Examiner to provide reasons and/or examples in support of restriction (MPEP 803). For requirements to restrict should have two aspects: (1) the reasons why the invention is independent/distinct, and (2) reasons for insisting upon restriction (MPEP 808).

In the particular case of product and process, such inventions are distinct if the product claimed can be made another process materially different than the claimed process.

It is not believed that distinctness has been established as the process relied upon in the restriction requirement is not materially different than the claimed process.

The restriction requirement has divided the claims into a group I (claims 1-9) drawn to a product, and a group II (claims 10-26) drawn to a process of making. The rejection recites the following process of making in support of the restriction requirement.

forming sacrificial layers on an etch stop layer formed on a monitor wafer, the sacrificial layers having predetermined dimensions,

forming a first layer on the wafer and planarizing the first layer to expose a top surface of the sacrificial layers, and

removing the sacrificial layers, thereby forming trenches in the first layer, the trenches having the same dimensions as the sacrificial layers.

Applicants' invention of group II is not materially different. Claim 20 recites the following:

processing a monitor wafer having monitoring trenches formed in a first layer...

There does not appear to be any material difference between the process relied upon in the restriction requirement and that of claim 20. There is no language in claim 20 that would limit the formation of a monitoring trench to any particular process.

Accordingly, because distinctness has not been established, this ground for rejection is withdrawn.

Traversal of Election

The Office Action appears to require an election of species.¹ In particular, the Office Action indicates that *claims* 10-19 are believed to be one species while claims 20-26 are believed to be another.

It is well established that *claims are never species. Species are always the specific different embodiments.*² Accordingly, an assertion that the claims represent different species is error. It is not possible for Applicants' to elect from among different claim sets.

Accordingly, this election requirement is improper and should be withdrawn.

It is believed that the requirements for restriction have been traversed and the application may now be examined on the merits. Such action is respectfully requested.

Respectfully Submitted,

 6/7/02

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¹ See the Restriction Requirement, dated 5/7/02, Page 3, Section 5.

² MPEP §806.04(e), emphasis in original.

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